REMARKS

Favorable reconsideration and allowance of this application are respectfully requested. Claims 1-24 and 104-111 are pending for examination.

Claims 1-24 and 104-111 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Lipson (U.S. Pat. 5,435,554). Applicant traverses this rejection.

Lipson fails to teach or suggest all of the claim limitations. For example Lipson fails to teach or suggest "after the pitcher character's wind-up has begun, monitoring for user input on the user-operable controller indicating that a pitch is to be released by the pitcher character;...comparing a time at which the user input is detected to an optimal pitch release timing; releasing the pitch corresponding to the time at which the user input is detected since the pitcher character's wind-up has begun; and controlling a timing of a break on the baseball pitch based on the comparison," as required by independent claim 1. Similar (but not necessarily identical) comments apply to independent claims 9 and 104. Lipson also fails to teach or suggest "as the pitcher character's windup progresses, monitoring for user input on the user-operable controller requesting release of a baseball pitch by the pitcher character" and "comparing the detected position of the release meter to the target...and controlling when a break on the baseball pitch occurs during its flight based on the comparison," as required by independent claim 17.

Lipson discloses displaying a first gauge 66 in Fig. 3a. After a player depresses a button while the first gauge 66 is being displayed, a second gauge 82 is then displayed. (See Fig. 3b). The first gauge 66 is pitch or throw quality gauge. The second gauge 82 is a power gauge. Neither the *pitch or throw quality* gauge 66 nor the *power* gauge 82 discloses a *release* meter as explicitly required by claim 17. Neither the pitch or throw quality gauge 66 nor the power gauge 82 enables comparison to an *optimal release timing* as required by claims 1, 9 and 104. Accordingly, the Office Action's (Page 3) allegation that "Lipson's invention is also directed to using a gauge to determine when a pitch break occurs in the trajectory of the ball" is unfounded. While Lipson does discloses gauges 66 and 82, these gauges 66 and 82 are directed to different parameters than those claimed.

In more detail, while Lipson's power gauge 82 includes a maximum power marker 84, this *maximum* power is not necessarily an *optimal* power, and certainly does not denote an *optimal release timing* or *a target of release meter*. (See col. 7, lines 50-53 of Lipson stating "It *may or may not* be desirable to throw a pitch with the maximum power (emphasis added)..."). As further examples, the marker 78 of the gauge 66 involves a "perfect grip" (e.g., the pitcher's grip pressure on the ball and the way the pitcher holds the ball relative to the baseball's stitching in real world baseball) and the marker 76 of the gauge 66 involves a pick-off of a leading

base runner on first, second or third base, rather than an optimal release timing of a pitch or a target on a release meter.

Page 2 of the Office Action alleges that elements 128 and 130 of Fig. 4b discloses comparing a timing at which user input is detected to an optimal pitch release timing. Applicant disagrees with this allegation. As described in col. 9 of Lipson, while elements 128 and 130 involve setting a pitch quality as a function of a position of indicator 74 relative to markers 76, 78, and 80 in gauge 66, none of these markers denotes an optimal release timing and gauge 66 is not a release meter.

Since Lipson fails to teach or suggest comparison to an optimal release timing (claim 1, 9 and 104) or comparison to a target of a release meter (claim 17), Lipson further fails to teach or suggest controlling a break on a baseball pitch based on the comparison. Lipson's mere general recognition that a pitcher's throw may be controlled based on a quality of pitch and power of the pitch does not mean that one of ordinary skill in the art would have specifically taught or suggested making a comparison to an optimal release timing or release meter target, let alone controlling a break on a baseball pitch based on the comparison. There is simply no evidence or suggestion in Lipson of such features. The only suggestion of claims 1, 9, 17 and 104 is from using Applicant's invention as a template through a hindsight reconstruction of Applicant's claims.

Page 3 of the Office Action alleges "Lipson's gauges measure theses attributes (i.e. power and pitch style). To now have these gauges correspond to the wind up session of a pitcher would have been obvious to one of ordinary skill in the art." This allegation is specious at best. The above allegation that Lipson's gauges measure power and pitch style highlights the fact that each of Lipson's gauges is not a release meter or does not enable comparison to an optimal release timing.

Moreover, Lipson actually teaches away from "hav[ing] these gauges correspond to the wind up session of a pitcher" as alleged by the Office Action. In particular, Lipson explicitly discloses displaying gauges 66 and 82 serially (i.e., displayed one after the other) with a respective indicator 74, 86 that repeatedly resets and rotates until a player presses a button (see, e.g., col. 6, lines 59-65). If the pitcher had already begun the windup before Lipson's gauges 66 and 82 were serially displayed as alleged in the Office Action, either the windup would have to pause or the user would have to depress a controller button too quickly in response to the displayed gauge, thereby defeating the purpose of the repeated reset and rotation of the indicators 74, 86 respectively on the gauges 66, 82 and making it virtually impossible for the player to make selections in all the gauges (and the system to perform the associated processing) during the relatively brief duration of a pitcher's windup. The number of required inputs in response to gauges 66, 82, as well as the other required inputs for a pitch, such as (i) the initial selection of

the type of pitch (curve ball, fast ball or special pitch) through button 34, 35 or 36 as shown in step 112 *before* display of the gauges 66, 82 and (ii) the directional control of the pitch through joystick 16 as shown in step 146 after the display of the gauges 66, 82, would make it virtually impossible for all of these required inputs to be received and processed during the wind up session of the pitch as alleged by the Office Action. It is simply improper to ignore these explicit disclosures of Lipson which teach away from claims "hav[ing] these gauges correspond to the wind up session of a pitcher" as alleged by the Office Action. That is, one of ordinary skill in the art having common sense would have recognized that receiving and processing all of the inputs and displaying all of the gauges required for a pitch in Lipson's system would not have been possible during the relatively short period of time that occurs during a pitcher's wind-up.

Instead of "hav[ing] these gauges correspond to the wind up session of a pitcher" as alleged by the Office Action, Lipson explicitly discloses serial display of the gauges 66, 82 receiving all user inputs for the pitch only prior to the pitch. (*See, e.g.,* col. 7, line 68 *et seq.* stating "A third depress will register the power of the pitch as a function of the indicator 86 position [in the power gauge 82]. After the third time that a button is depressed, the pitch animation sequence **begins** and the game proceeds," and col. 10, lines 42-43 stating "Once the power of the pitch has been set, a final **pre**-pitch input is made in state 146 (emphasis added).")

Additionally, claims 1 and 9 require releasing the ball at a time corresponding to when user input is detected since the pitcher character's wind up has begun. Similarly, claim 17 requires " generating a display of the pitcher character's release of the pitch, the display of the release corresponding to the time the user input is detected as the pitcher character's windup progresses" and claim 104 requires "displaying release of the pitch at the time the user input is detected, the ball being released at a release point based at least on how long until the user input is detected since the pitcher character's wind-up has begun." In contrast, Lipson fails to teach or suggest, for example, that a ball is displayed as being released at different points in a pitcher's windup. Further, there is no teaching or suggestion in Lipson that a release point corresponds to a detected input, such that the release occurs at a point when the input is detected. As discussed above, all of Lipson's pitching inputs are made before the pitch.

Dependent claims 2-8, 10-16, 18-24 and 105-111 are deemed to be allowable based at least for the same reasons as their respective base independent claim. Applicant therefore requests withdrawal of the rejection of claims 1-24 and 104-111 under 35 U.S.C. §103 over Lipson.

Applicant believes that all claims are in condition for allowance and respectfully requests a notice to this effect. If the Examiner has any questions or believes that an interview would further prosecution of this application, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

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